

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Senate Bill 289 be amended to read as follows:

- 1 Page 12, after line 35, begin a new paragraph and insert:
- 2 "SECTION 6. IC 34-18-5-2 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) As used in this
- 4 section, "actuarial program" means a program used or created by the
- 5 department to determine the actuarial risk posed to the patient
- 6 compensation fund under IC 34-18-6 (or IC 27-12-6 before its repeal)
- 7 by a hospital. The program must be:
- 8 (1) developed to calculate actuarial risk posed by a hospital,
- 9 taking into consideration risk management programs used by the
- 10 hospital;
- 11 (2) an efficient and accurate means of calculating a hospital's
- 12 malpractice actuarial risk;
- 13 (3) publicly identified by the department by July 1 of each year;
- 14 and
- 15 (4) made available to a hospital's malpractice insurance carrier for
- 16 purposes of calculating the hospital's surcharge under subsection
- 17 (g).
- 18 (b) Beginning July 1, 1999, the amount of the annual surcharge shall
- 19 be one hundred percent (100%) of the cost to each health care provider
- 20 for maintenance of financial responsibility. Beginning July 1, 2001, the
- 21 annual surcharge shall be set by a rule adopted by the commissioner
- 22 under IC 4-22-2.
- 23 (c) The amount of the surcharge shall be determined based upon
- 24 actuarial principles and actuarial studies and must be adequate for the

1 payment of claims and expenses from the patient's compensation fund.

2 (d) The surcharge **for qualified providers other than:**

3 **(1) physicians licensed under IC 25-22.5; and**

4 **(2) hospitals licensed under IC 16-21;**

5 may not exceed the actuarial risk posed to the patient's compensation
6 fund under IC 34-18 (or IC 27-12 before its repeal) by qualified
7 providers **other than physicians licensed under IC 25-22.5 and**
8 **hospitals licensed under IC 16-21.**

9 (e) There is imposed a minimum annual surcharge of one hundred
10 dollars (\$100).

11 (f) Notwithstanding subsections (b), (c), and (e), beginning July 1,
12 1999, the surcharge for a qualified provider who is licensed under
13 IC 25-22.5 is calculated as follows:

14 (1) The commissioner shall contract with an actuary that has
15 experience in calculating the actuarial risks posed by physicians.
16 Not later than July 1 of each year, the actuary shall calculate the
17 median of the premiums paid for malpractice liability policies to
18 the three (3) malpractice insurance carriers in the state that have
19 underwritten the most malpractice insurance policies for all
20 physicians practicing in the same specialty class in Indiana during
21 the previous twelve (12) month period. In calculating the median,
22 the actuary shall consider the:

23 (A) manual rates of the three (3) leading malpractice insurance
24 carriers in the state; and

25 (B) aggregate credits or debits to the manual rates given
26 during the previous twelve (12) month period.

27 (2) After making the calculation described in subdivision (1), the
28 actuary shall establish a uniform surcharge for all licensed
29 physicians practicing in the same specialty class. This surcharge
30 must be based on a percentage of the median calculated in
31 subdivision (1) for all licensed physicians practicing in the same
32 specialty class under rules adopted by the commissioner under
33 IC 4-22-2. The surcharge:

34 (A) must be sufficient to cover; and

35 (B) may not exceed;

36 the actuarial risk posed to the patient compensation fund under
37 IC 34-18-6 (or IC 27-12-6 before its repeal) by physicians
38 practicing in the specialty class.

39 (g) Beginning July 1, 1999, the surcharge for a hospital licensed
40 under IC 16-21 that establishes financial responsibility under
41 IC 34-18-4 after June 30, 1999, is established by the department
42 through the use of an actuarial program. At the time financial
43 responsibility is established for the hospital, the hospital shall pay the
44 surcharge amount established for the hospital under this section. The
45 surcharge:

46 (1) must be sufficient to cover; and

(2) may not exceed;
the actuarial risk posed to the patient compensation fund under
IC 34-18-6 by the hospital.

(h) An actuarial program used or developed under subsection (a)
shall be treated as a public record under IC 5-14-3.

SECTION 7. IC 34-18-15-3 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. If a health care
provider or its insurer has agreed to settle its liability on a claim by
payment of its policy limits of ~~one two~~ **fifty** thousand dollars
~~(\$100,000)~~, **(\$250,000)**, and the claimant is demanding an amount in
excess of that amount, the following procedure must be followed:

(1) A petition shall be filed by the claimant in the court named in
the proposed complaint, or in the circuit or superior court of
Marion County, at the claimant's election, seeking:

(A) approval of an agreed settlement, if any; or

(B) demanding payment of damages from the patient's
compensation fund.

(2) A copy of the petition with summons shall be served on the
commissioner, the health care provider, and the health care
provider's insurer, and must contain sufficient information to
inform the other parties about the nature of the claim and the
additional amount demanded.

(3) The commissioner and either the health care provider or the
insurer of the health care provider may agree to a settlement with
the claimant from the patient's compensation fund, or the
commissioner, the health care provider, or the insurer of the
health care provider may file written objections to the payment of
the amount demanded. The agreement or objections to the
payment demanded shall be filed within twenty (20) days after
service of summons with copy of the petition attached to the
summons.

(4) The judge of the court in which the petition is filed shall set
the petition for approval or, if objections have been filed, for
hearing, as soon as practicable. The court shall give notice of the
hearing to the claimant, the health care provider, the insurer of the
health care provider, and the commissioner.

(5) At the hearing, the commissioner, the claimant, the health care
provider, and the insurer of the health care provider may
introduce relevant evidence to enable the court to determine
whether or not the petition should be approved if the evidence is
submitted on agreement without objections. If the commissioner,
the health care provider, the insurer of the health care provider,
and the claimant cannot agree on the amount, if any, to be paid
out of the patient's compensation fund, the court shall, after
hearing any relevant evidence on the issue of claimant's damage
submitted by any of the parties described in this section,

1 determine the amount of claimant's damages, if any, in excess of
2 the ~~one~~ **two** hundred **fifty** thousand dollars (~~\$100,000~~) (**\$250,000**)
3 already paid by the insurer of the health care provider. The court
4 shall determine the amount for which the fund is liable and make
5 a finding and judgment accordingly. In approving a settlement or
6 determining the amount, if any, to be paid from the patient's
7 compensation fund, the court shall consider the liability of the
8 health care provider as admitted and established.

9 (6) A settlement approved by the court may not be appealed. A
10 judgment of the court fixing damages recoverable in a contested
11 proceeding is appealable pursuant to the rules governing appeals
12 in any other civil case tried by the court.

13 (7) A release executed between the parties does not bar access to
14 the patient's compensation fund unless the release specifically
15 provides otherwise."

(Reference is to ESB 289 as printed March 24, 1999.)

Representative Pelath